100TH CONGRESS
2d Session

SENATE

TREATY DOC.
100–16

TREATY WITH BELGIUM ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF BELGIUM ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT WASHINGTON ON JANUARY 28, 1988

MARCH 29, 1988.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

19–118 WASHINGTON : 1988

S385-7

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 29, 1988.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters, signed at Washington on January 28, 1988. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter more effectively criminal activities. The Treaty should be an effective tool to prosecute a wide variety of modern criminals including members of drug cartels, "white-collar criminals," and terrorists. The Treaty is self-executing and utilizes existing statutory authority.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) the taking of testimony or statements of witnesses; (2) the provision of documents, records, and evidence; (3) the execution of requests for searches and seizures; (4) the serving of documents; and (5) the provision of assistance in locating, tracing, immobilizing, seizing, and forfeiting proceeds of crime, and restitution to the victims of crime.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 11, 1988.

The PRESIDENT.

I have the honor to submit to you the Treaty between the United States of America and the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters (the "Treaty"), signed at Washington on January 28, 1988. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Italy, the Netherlands, Switzerland and Turkey; and others have been concluded (but not yet entered into force) with the Bahamas, Canada, Colombia, Morocco, Mexico, Thailand, and the United Kingdom on behalf of the Cayman Islands. The Treaty contains many provisions similar to those in the other treaties as well as some innovations.

The Treaty will not require implementing legislation and will utilize the existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in "all matters relating to the investigation, prosecution and suppression of offenses." The Treaty thereby provides for assistance at the investigative stage (such as grand jury proceedings), as well as after formal charges have been filed. The article states that, except as otherwise provided by the Treaty, assistance shall be provided for any offense under the laws of the Requesting State. Assistance under the Treaty will include: provision of documents, records and evidence; executing requests for searches and seizures; obtaining witness testimony; and other forms of assistance. The article explicitly states that it is not intended to create rights in private parties either to gather evidence or secure other assistance or to suppress or exclude in civil or criminal proceedings evidence obtained under the Treaty.

Article 2 requires the Requested State to make thorough efforts to ascertain the location or identity of persons, such as witnesses or suspects, specified in the request.

Article 3 obligates the Requested State to effect service of any legal document at the request of the other State. The article also requires that any request for service of a document requiring the appearance of a person be transmitted to the Requested State a reasonable time before the scheduled appearance. Finally, it provides that the Requested State return as proof of service a dated receipt signed by the person served or a declaration by the officer effecting service stating the form and date of service.

Article 4 provides that when a Requesting State considers the appearance of a witness or expert before its judicial authorities particularly necessary, it may request such an appearance, and the Requested State is required to invite that person's appearance in the Requesting State. The Requested State is obligated promptly to inform the Requesting State of the person's reply. The article also provides that the Requesting State reimburse appropriately the witness or expert for travel expenses and subsistence in complying with the request and may, upon the person's request, provide an advance for such expenses and subsistence. The article provides that, even if a summons to any such witness or expert contains a notice of penalty, a witness or expert whose appearance is requested in the Requesting State shall not be subjected to any punishment or restraint in the Requested State.

Article 5 obligates the Requested State to provide to the Requesting State publicly available information and items, including documents or records, in the possession of a government office or agency. The article also authorizes the Requested State to make available to the Requesting State information and items which are not publicly available to the same extent and under the same conditions as would be available to its law enforcement or judicial authorities or in its discretion to deny the request entirely or in part.

Article 6 states that the Requested State shall, if necessary and to the same extent as in investigations or proceedings in the Requested State, compel a person to appear and to testify or to produce items, including documents, records and articles of evidence. The article provides that, though the testimonial privileges available under the law of the Requesting State will not be considered in the execution of the request, any such claim of privilege shall be noted in the record. The article also provides the Requested State shall specifiy the date and place of the taking of testimony and that the Requested State shall permit the presence of the accused, counsel for the accused or of any other interested person specified in the request, and shall provide any such person the opportunity to formulate questions in accordance with the procedures applicable in the Requested State.

Article 7 obligates each State to the extent permitted under its laws to execute requests for search, seizure and delivery of all items to the Requesting State; it also provides that such requests shall be executed in accordance with the laws of the Requested State. Paragraph 2 concerns surrender of items and return. Paragraph 3 provides that the rights of third parties to such items shall be duly respected.

Article 8 establishes a mechanism for ensuring the admissibility of the items produced or seized under the Treaty, including provision of attestations in compliance with the form appended to this Treaty. It requires that the Requested State follow the procedures requested by the Requesting State, except when prohibited by the Requested State's laws, and in the event of special circumstances obligates the Central Authorities defined in Article 17 to consult.

Article 9 provides that the Requesting State may, if the person in custody consents and the Requested State has no reason to refuse, request the transfer to the Requesting State of a person in custody in the Requested State. However, the Requested State may

postpone the tranfer as long as the presence of the person is necessary for an investigation or proceeding in the Requested State. The Requesting State must keep that person in custody unless the Requested State has ordered release and shall return any person not released, including nationals of the Requesting State, as soon as circumstances permit unless otherwise agreed.

Article 10 provides that the Requesting State may, if the person in custody consents and the Requested State has no reason to refuse, request the transfer to the Requested State of a person in custody in the Requesting State. The Requested State must keep that person in custody unless the Requesting State has ordered release and shall return any person not released, including nationals of the Requested State, as soon as circumstances permit.

Article 11 provides for the deduction of time spent in custody in one State pursuant to a request made under the Treaty from the time remaining to be served in the other State. It also provides that a person transferred under the Treaty shall not be prosecuted or restrained in the State to which he has been transferred for acts or convictions prior to his transfer. The article also provides that any such immunity shall cease if, for 15 consecutive days after the person has had an opportunity to leave, he has remained or, having left, has returned. If any such person escapes, the State to which he has been transferred shall make every effort to arrest him.

Article 12 requires that one Central Authority notify the other when it believes the proceeds of a criminal offense are in the territory of the other State. In addition, it provides that, to the extent permitted by their respective laws, the parties shall assist each other to locate, trace, immobilize, seize and forfeit proceeds of crime and to assure restitution to the victims of crime.

Article 13 sets forth the circumstances under which a party may deny assistance under the Treaty, including requests whose execution would prejudice the sovereignty, security or other essential public interests of the Requested State, and requests relating to military or political offenses. However, paragraph 2 makes clear that assistance shall not be denied in respect of any offense the parties may consider not to be a political offense under any other international agreement to which they are parties. However, it also provides that before denying assistance on such grounds the Central Authority of the Requested State to consider whether assistance may be given subject to such conditions it deems necessary. If the Requesting State accepts such conditions, it shall comply with the conditions. The Requested State may also postpone execution of request or grant it subject to conditions if execution would interfere with an ongoing investigation or proceeding in that State. The Requested State is obligated to communicate to the Requesting State its reasons for denying or postponing assistance as soon as possible.

Article 14 establishes procedures for ensuring the confidentiality of requests and their contents.

Article 15 sets forth the information which must be included in a request and the additional information which must be included "to the extent necessary and possible."

Article 16 obligates the Central Authorities of each party to comply promptly with a request or, when appropriate, to transmit a request for execution to the authority having jurisdiction to execute it. It also states that the judicial authorities of the Requested State shall have jurisdiction to issue subpoenas, search warrants or other orders necessary to execute a request. Except as otherwise provided by the Treaty, requests shall be executed according to the laws and procedures of the Requested State. However, the Requested State is required to follow the procedures specified in the request, even if unfamiliar to that State, except to the extent specifically prohibited by the laws of the Requested State. Although copies of requested items may be provided, the article further provides that, upon application, the Requested State shall make every effort to furnish original items. The Requesting State shall return any items furnished as soon as possible unless the Requested State waives their return.

Article 17 defines the Central Authorities for purposes of the Treaty. For the United States, the Central Authority is the Attorney General or officials designated by him.

Article 18 of the Treaty establishes the basic rule that the Requested State shall render assistance without cost to the Requesting State except for the fees of private experts authorized by the request and the costs relating to the transfer of a person in custody, and provides for consultations in the event of expenses of an extraordinary nature. It also provides that, while letters of transmission from one Central Authority to another need not be translated, the Requesting State is obligated to provide a translation of its requests, and that attachments to requests shall be translated as necessary.

Article 19 provides that the Treaty does not impede any assistance or procedure available under other international conventions or arrangements or under the domestic laws or practices of the parties.

Article 20 provides that the Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification and provides for termination effective six months after written notice of termination is given. It also makes clear that the Treaty shall apply to offenses committed before as well as after it enters into force.

The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate as soon as possible.

Respectfully submitted.

GEORGE P. SHULTZ.

Treaty Between the United States of America and the Kingdom of Belgium on Mutual Legal Assistance in Criminal Matters

The Government of the United States of America and the Government of the Kingdom of Belgium, desiring to conclude a Treaty on mutual legal assistance in criminal matters,

Have agreed as follows:

ARTICLE 1.—SCOPE OF APPLICATION

1. The Contracting States shall provide, in accordance with the provisions of this Treaty, mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offenses.

2. Assistance shall include, but not be limited to:

(a) locating or identifying persons;

(b) serving documents;

(c) providing information and items, including documents, records and articles of evidence;

(d) taking testimony and producing documents;

(e) executing requests for search and seizure;

(f) transferring persons in custody for testimonial or other purposes;

(g) locating, tracing, immobilizing, seizing and forfeiting proceeds of crime; and

(h) assuring restitution to victims of crime.

3. Unless otherwise provided by this Treaty, assistance shall be provided for any offense under the laws of the Requesting State.

4. This Treaty is intended solely for mutual legal assistance between the Contracting States. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2.—LOCATING OR IDENTIFYING PERSONS

The Requested State shall make thorough efforts to ascertain the location or identity of persons specified in the request.

ARTICLE 3.—SERVING DOCUMENTS

1. The Requested State shall cause service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

ARTICLE 4.—APPEARANCE OF WITNESSES AND EXPERTS IN THE REQUESTING STATE

1. If the Requesting State considers that the personal appearance of a witness or expert before its judicial authorities is particularly necessary, it may so state in its request, and the Requested State shall invite the witness or expert to appear. The Requested State shall promptly inform the Requesting State of the reply of the witness or expert.

2. The witness or expert shall be approximately reimbursed by the Requesting State for travel expenses and subsistence incurred in complying with the request. If the witness or expert so requests, the Requesting State may provide an advance with respect to those travel expenses and subsistence; this advance may be provided through its embassy in the Requested State.

3. The witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not be subjected to any punishment or measure of restraint in the Requested State, even if the summons contains a notice of penalty.

ARTICLE 5.—PROVIDING INFORMATION AND ITEMS IN THE POSSESSION OF GOVERNMENT OFFICES OR AGENCIES

Upon request and for the purposes of this Treaty:

(a) the Requested State shall provide publicly available information and items, including documents or records, in the possession of a government office or agency;

(b) the Requested State may provide information and items, including documents or records, in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

ARTICLE 6.—TAKING TESTIMONY AND PRODUCING DOCUMENTS IN THE REQUESTED STATE

1. A person from whom evidence is sought shall, if necessary, be compelled by subpoena to appear and to testify or to produce items, including documents, records and articles of evidence, to the same extent as in investigations or proceedings in the Requested State. Testimonial privileges under the laws of the Requesting State shall not be taken into consideration in the execution of requests under this Article, but any such claim shall be noted in the record.

2. On request, the Requested State shall state the date and place of the taking of testimony.

3. At the execution of a request, the Requested State shall permit the presence of the accused, counsel for the accused, and any other interested person specified in the request.

4. The executing authority shall provide any person permitted to be present the opportunity to pose questions for the person whose testimony is sought. The questions shall be posed in accordance with applicable procedures in the Requested State.

ARTICLE 7.—EXECUTING REQUESTS FOR SEARCH AND SEIZURE

1. To the extent permitted under its laws, the Requested State shall execute a request for the search, seizure, and delivery of all items, including documents, records and articles of evidence, to the Requesting State if the request includes the information justifying such action under the laws of the Requested State. The search and seizure shall be carried out in accordance with the laws of that State.

2. The Requested State may condition the surrender of the items upon satisfactory assurances from the Requesting State that the items will be returned to the Requested State as soon as practicable. Without such a condition, no obligation shall exist to return the items to the Requested State. The Requested State may also defer the surrender of items needed as evidence in that State.

3. The rights of third parties in such items shall be duly respected.

ARTICLE 8.—PROCEDURES CONCERNING ADMISSIBILITY OF EVIDENCE

1. The Requesting State may ask the Requested State to follow particular procedures in executing a request under Article 5, 6, or 7 to ensure admissibility of the items produced or seized, and the Requested State shall follow these procedures, provided they are not prohibited by its laws.

2. The items seized in Belgium shall be held in custody by the office of the court clerk after being inventoried. Those items will be kept by that office at the disposal of the authorities of the United States of America. Upon request, that office shall provide, with the items delivered, attestations in compliance with the form appended to this Treaty and executed by each person having had possession of the items from the time of seizure. These attestations shall be admissible in evidence in the United States of America as proof of the truth of the matters set forth therein; no other attestation shall be required.

3. In the event of special circumstances, the Central Authorities shall consult concerning practical arrangements relating to the particular procedures to be followed.

ARTICLE 9.—TRANSFERRING PERSONS IN CUSTODY IN THE REQUESTED STATE TO THE REQUESTING STATE

1. A person in custody in the Requested State who is needed for purposes of assistance under this Treaty in the Requesting State shall be transported to the Requesting State if the person in custody consents and the Requested State has no reason to deny the transfer.

2. The Requested State may postpone execution of the request for as long as the presence of the person is necessary for an investigation or proceeding in the Requested State.

3. The Requesting State shall have the authority and obligation to keep the person in custody unless the Requested State has ordered release.

4. The Requesting State shall return a person not released under paragraph 3 to the custody of the Requested State as soon as circumstances permit unless otherwise agreed. The Requesting State

shall not decline to return a person transferred because such person is a national of that State.

ARTICLE 10.—TRANSFERRING PERSONS IN CUSTODY IN THE REQUESTING STATE TO THE REQUESTED STATE

1. For purposes of assistance under this Treaty, the Requesting State may request the transfer to the Requested State of a person in its custody if the person in custody consents and the Requested State has no reason to deny the transfer.

2. The Requested State shall have the authority and obligation to keep that person in custody unless the Requesting State has ordered release.

3. The Requested State shall return a person not released under paragraph 2 to the custody of the Requesting State as soon as circumstances permit unless otherwise agreed. The Requested State shall not decline to return the person transferred because such person is a national of that State.

ARTICLE 11.—APPLICATION OF ARTICLES 9 AND 10

1. For purposes of Articles 9 and 10:

(a) The time spent in custody in the State to which a person has been transferred will be deducted from the time remaining to be served in the other State.

(b) The person transferred may not be prosecuted, detained or subjected to any other restriction of personal liability in the State to which he has been transferred for acts or convictions prior to his transfer.

(c) The immunity provided in sub-paragraph b shall cease if the person transferred:

(i) having had for a period of 15 consecutive days an opportunity to leave the State to which he has been transferred, has remained; or

(ii) having left, has returned.

2. If the transferred person escapes, the State to which he has been transferred shall make every effort to arrest him.

3. Extradition proceedings shall not be required in order to effect the return of persons transferred under Article 9 or 10.

ARTICLE 12.—PROCEEDS OF CRIME AND RESTITUTION TO VICTIMS

1. To the extent permitted by its domestic laws applicable at the time that the request is made, each Contracting State commits itself to grant assistance to:

(a) locate, trace, immobilize, seize and forfeit proceeds of crime; and

(b) assure restitution to victims.

2. The Central Authority of a Contracting State which has reason to believe that proceeds of crime may be discovered in the other State shall notify the Central Authority of that State which shall determine whether any action is appropriate and report as soon as possible on the action taken.

ARTICLE 13.—LIMITATIONS ON ASSISTANCE

1. The Central Authority of the Requested State may deny a request to the extent that:

(a) execution of the request would prejudice the sovereignty, security or other essential public interests of the Requested State;

(b) the request relates to an offense under military law which would not be an offense under ordinary criminal law; or

(c) the request does not comply with the provisions of this Treaty.

2. The Central Authority of the Requested State may also deny a request if it involves a political offense. This paragraph shall not apply to any offense which the Contracting States may consider not be to a political offense under any other international agreement to which they are parties.

3. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. The Central Authority of the Requested State may postpone execution of a request or grant it subject to conditions if execution would interfere with an ongoing investigation or legal proceeding in the Requested State.

5. The Central Authority of the Requested State shall inform the Central Authority of the Requesting State as soon as possible of the reason for denying or postponing the execution of a request.

ARTICLE 14.—PROTECTING CONFIDENTIALITY

Upon the request of the Requesting State, the Requested State shall use its best efforts to keep confidential a request and its contents. If the request cannot be executed without breaching the required confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then decide whether the request should nevertheless be executed.

ARTICLE 15.—CONTENTS OF REQUESTS

1. A request for assistance shall indicate:

(a) the name of the authority conducting the investigation or proceeding to which the request relates;

(b) the subject matter and nature of the investigation or proceeding;

(c) a description of the information or item sought or the action to be performed; and

(d) the purpose for which the information, item or action is sought.

2. To the extent necessary and possible, a request shall include:

(a) available information on the identity and whereabouts of a person to be located;

(b) the identity and location of a person to be served, that person's relationship to the proceeding and the manner in which service is to be made;

(c) the identity and location of persons from whom evidence is sought;

(d) a description of the manner in which any testimony is to be taken and recorded;

(e) a list of questions to be answered;

(f) a precise description of the place to be searched and the items to be seized;

(g) a description of any particular procedure to be followed in executing the request; and

(h) information relating to the allowance to which the witness or expert appearing in the Requesting State may be entitled.

ARTICLE 16.— EXECUTING REQUESTS AND RETURN OF ITEMS

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, transmit it for execution to the authority having jurisdiction, which shall make best efforts to execute the request. The judicial authorities of the Requested State shall have jurisdiction to issue subpoenas, search warrants or other orders necessary to execute the request.

2. Requests shall be executed according to the domestic laws and procedures of the Requested State except to the extent that this Treaty provides otherwise. Procedures specified in the request, even if unfamiliar to the Requested State, shall be followed except to the extent specifically prohibited by the laws of the Requested State.

3. The Requested State may furnish copies of items, including documents, records, and articles of evidence, obtained in executing a request. Upon application of the Requesting State, the Requested State shall make every effort to furnish original items.

4. Except as provided in Article 7, the Requesting State shall return any items furnished in execution of requests for assistance as soon as possible unless the Requested State waives their return.

ARTICLE 17.—CENTRAL AUTHORITIES

1. All requests for assistance shall be made and executed through a Central Authority for each Contracting State. The Central Authorities of the two States shall communicate directly with each other for the purpose of carrying out the provisions of this Treaty.

2. For the purposes of this Treaty, the term "Central Authority" means:

(a) for the Kingdom of Belgium, the Minister of Justice or his representative or delegate;

(b) for the United States of America, the Attorney General or officials designated by him.

ARTICLE 18.—COSTS AND TRANSLATIONS

1. The Requested State shall render assistance without cost to the Requesting State except for fees of private experts authorized by the request.

2. The Requesting State shall bear all expenses related to the transfer under Articles 9 and 10 of a person in custody.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Central Authorities shall consult to determine the terms and conditions under which the execution of the request may continue.

4. Requests under this Treaty shall be provided in English and either French or Dutch; however, letters of transmission from the Central Authority need not be translated. Attachments to such requests shall be translated as necessary by the Requesting State. Translation of documents provided pursuant to requests is incumbent on the Requesting State.

ARTICLE 19.—OTHER TREATIES AND DOMESTIC LAWS

Assistance and procedures provided by this Treaty shall not impede any assistance or procedure available under other international conventions or arrangements or under the domestic laws and practices of the Contracting States.

ARTICLE 20.—ENTRY INTO FORCE AND TERMINATION

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Brussels, as soon as possible.

2. This Treaty shall enter into force on the first day of the second month after the exchange of the instruments of ratification.

3. This Treaty shall apply to offenses committed before as well as after it enters into force.

4. Either Contracting State may terminate this Treaty at any time by giving written notice to the other Contracting State. The termination shall be effective six months after the date of such notice.

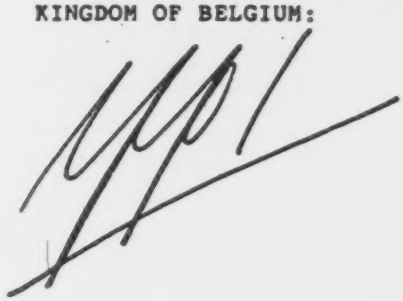
IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Treaty.

DONE at Washington, in duplicate, this twenty-eighth day of January, 1988, in the English, French and Dutch languages, all three texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Edwin Meese III

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:



FORM

I, the undersigned, (Family Name), (Forenames),
(Address),
(Title or Function),

attest on penalty of criminal punishment for false statements or attestation that I:

-- seized the articles listed below from (person) on (date) at (place) (*)

-- received custody of the articles listed below from (person) on (date) at (place) (*)

Description of articles:

I declare that I relinquished custody of those articles on (date) at (place) to: (Name(s)), (Forenames)
(Address)
(Title or Function).

I declare that, while they were in my custody, these articles were:

-- in no way altered. (*)

-- altered in the following manner: (*)

DONE this _____ day of _____, ____, at (place).

(signature)

(*) cross out the inapplicable statements

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100TH CONGRESS
2d Session

SENATE

TREATY DOC.
100–17

TREATY WITH THE BAHAMAS ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF THE BAHAMAS ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT NASSAU ON JUNE 12 AND AUGUST 18, 1987, WITH RELATED NOTES

APRIL 13, 1988.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

19–118 WASHINGTON : 1988

S385-8

LETTER OF TRANSMITTAL

The White House, April 13, 1988.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Commonwealth of The Bahamas on Mutual Assistance in Criminal Matters, signed at Nassau on June 12 and August 18, 1987, with related notes. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter criminal activities more effectively. The Treaty should be an effective tool in prosecuting a wide variety of modern criminals, including members of drug cartels, and "white-collar criminals." The Treaty is self-executing and utilizes existing statutory authority.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) taking testimony or statements of witnesses; (2) provision of documents, records, and evidence; (3) execution of requests for searches and seizures; (4) transfer of persons in custody for testimonial purposes; (5) serving documents; (6) locating persons; (7) exchanging information; (8) immobilizing forfeitable assets; and (9) any other matter mutually agreed upon.

I recommend that the Senate give early and favorable consideration to the Treaty, with related notes, and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, March 23, 1988.

The PRESIDENT.

I have the honor to submit to you the Treaty between the United States of America and the Commonwealth of the Bahamas on Mutual Assistance in Criminal Matters (the "Treaty"), signed at Nassau on June 12 and August 18, 1987, with related notes. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Italy, the Netherlands, Switzerland and Turkey; others have been concluded with Belgium, Canada, Colombia, Mexico, Morocco, Thailand, and the United Kingdom on behalf of the Cayman Islands, but have not yet entered into force. The Treaty contains many provisions similar to those in the other treaties as well as some innovations.

The Treaty will not require implementing legislation and will utilize the existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in all matters involving "the investigation, prosecution and suppression" of criminal offenses and in "proceedings connected therewith." The Treaty thereby permits mutual assistance at the investigative stage, at grand jury proceedings, and after formal charges have been filed. It also provides for assistance in civil and administrative proceedings relating to narcotics trafficking. Under the Treaty, the Parties may obtain assistance from each other in taking testimony and statements, in obtaining documents, records and evidence, in executing requests for searches and seizures, and in other matters mutually agreed upon. The Treaty provides solely for government-to-government mutual assistance, and thus is not intended to create rights in private parties.

Article 2 defines the "offences" and "proceedings" that can be the basis of a legal assistance request. The first paragraph describes an "offence" as any conduct punishable as a crime under the laws of both the United States and The Bahamas. An "offence" also includes conduct punishable by at least one year under the laws of the State requesting assistance, if that conduct amounts to illegal narcotics-related activities, theft, obtaining money or property by false pretenses, embezzlement, a crime of violence, fraud, or a violation of a law relating to currency or other financial transactions as an integral element of any of the foregoing offenses.

The second paragraph of Article 2 excludes from covered offenses matters that relate to the regulation of taxes, including the imposition, calculation, and collection of taxes, except any matter pertaining to money derived from offenses defined in the first paragraph.

The third paragraph defines the "proceedings" for which the Parties can request legal assistance. "Proceedings" are defined to include criminal trials in either country, as well as U.S grand jury proceedings and Bahamian preliminary inquiries and commissions of inquiry. In addition, the Treaty can be applied to hearings involving the forfeiture of the fruits or instrumentalities of narcotics trafficking. Finally, the Treaty gives the Parties discretion to give assistance in civil hearings, criminal hearings, or administrative adjudicatory proceedings that could result in punishment, restitution to victims of an offense, or a fine imposed as a criminal sentence.

Article 3 permits the Parties to deny assistance under the Treaty in certain limited circumstances. The first paragraph of this article provides that a Party may decline to execute a request if it would prejudice its "security" or "essential public interests," as determined by its Central Authority. The Parties understand that the term "public interests" is to be interpreted narrowly and does not convert the Treaty's mandatory provisions into discretionary ones.

A Party may also deny a request if it relates to a political offense or a purely military offense, if it will be used for trial of a person on a charge for which that person has been previously tried in the Requesting State, or if the request is in support of a prosecution based on a person's race, religion, nationality, or political opinions. In addition, a Party may deny a request if the request does not establish reasonable grounds to believe that the offense has been committed or if it does not establish that the information sought relates to the offense and is located within the Requesting State. The term "reasonable grounds" does not mean the equivalent of a prima facie case or "probable cause," but rather a precise, rational explanation for the Requesting State's belief that a crime has been committed within its territory. Finally, this paragraph provides that a Party may turn down a request that does not conform to the terms of the Treaty.

The second paragraph of Article 3 provides that the Requested State may impose conditions on its assistance in lieu of denying a request outright pursuant to the first paragraph. The third paragraph states that a request for assistance need not be executed immediately where execution would interfere with an investigation or legal proceeding in progress in the Requested State. The final paragraph requires the Central Authority of the Requested State promptly to notify the Central Authority of the Requesting State of the reason for denying or postponing a request.

Article 4 requires each Party to establish a Central Authority responsible for transmitting, receiving and handling requests under the Treaty on behalf of Federal and State agencies, courts and other authorities in that State. The Central Authorities are, respectively, the Attorney General of the United States or his designee and the Attorney General of The Bahamas or his designee.

Article 5 provides that a request must be in writing if compulsory process—judicial subpoena, search warrants, and the like—is

necessary, or if the Requested State requires a written request. In an emergency, an oral request can be made, but it must be confirmed in writing "forthwith."

The second paragraph of Article 5 lists information that is crucial to efficient operation of the agreement and therefore must be included in each request. The third paragraph outlines information that should be provided "to the extent necessary and possible." There is no requirement under the Treaty that a request be legalized or certified in any particular manner.

Article 6 obligates each Central Authority to make all diligent efforts to execute requests promptly and to use all legal means within its power to execute a request. The article authorizes and requires the authority selected by the Central Authority to take whatever action necessary and within its power to carry out a request. If execution of the request entails action by a judicial or administrative agency, the Central Authority of the Requested State is required to arrange for presentation of the request to the court or agency at no cost to the other Party. Since the cost of retaining foreign counsel to present and process letters rogatory requests abroad is sometimes quite high, this provision for reciprocal legal representation should be a significant advance in international legal cooperation. Of course, a Party is free to hire private counsel to present a request for legal assistance.

The first paragraph of Article 7 provides that the Requesting State shall assume all ordinary expenses required to present evidence from the Requested State in the Requesting State. The second paragraph provides that the Requested State is required to pay all ordinary costs incurred in executing the request, such as filing fees, but is not responsible for the lawful fees of expert witnesses, the travel and incidental expenses of witnesses travelling to that State, translation and transcription expenses, costs involved in transporting requested documents to the Requesting State, or stenographic reports not prepared by a salaried government employee. The article also provides for consultation when expenses of an extraordinary nature are required to execute a request.

Article 7 also addresses a recurring problem in this area: the cost of legal representation of witnesses. The Parties have agreed that it would be unfair to call upon the Requesting State routinely to pay the legal expenses of witnesses responding to the Requested State's compulsory process issued pursuant to the Treaty. Accordingly, the Treaty provides that a witness appearing in the territory of the Requesting State is entitled only to the same witness fees ordinarily paid by the Requesting State, and that a witness appearing in the Requested State is entitled to fees as agreed between the Central Authorities.

Article 8 restricts the use of any information or evidence obtained under the Treaty to investigations, prosecutions, or suppression of criminal offenses stated in the request, absent prior consent of the Requested Party to other uses. Such other uses include inquiries, examinations, audits, efforts to identify targets, or use in any prosecutions or proceedings other than that for which assistance was granted. This article provides that all information or evidence furnished under the Treaty shall be treated as confidential except when disclosure is necessary for purposes of investigations

or proceedings forming part of the prosecution of an offense described in the request. The Treaty also imposes certain restrictions on additional uses of such information or evidence even after it has been made public in a proceeding forming part of a prosecution.

Article 9 provides that if compulsory process is necessary, the Requested State may compel the taking of testimony or production of documents for the Requesting State by means available under the Requested State's laws.

Article 10 authorizes the transfer of a person in custody in either State to the other for purposes of providing testimony, subject to the consent of the person and the relevant Party or Parties. Authority is also provided to keep such a person in custody unless release is authorized by the sending State. The receiving State is required to send the person back as soon as circumstances permit and is not permitted to condition the person's return on an extradition request by the sending State.

Article 11 provides that the Requested State shall invite, but not compel, witnesses located in its territory to appear in the Requesting State. The Requesting State is required to pay the expenses of such voluntary appearance in accordance with Article 7(5).

Article 12 ensures "safe conduct" for a witness who voluntarily appears in the Requesting State pursuant to Article 11. "Safe conduct" encompasses immunity from prosecution, service of civil process, detention or any restriction of personal liberty with regard to acts or convictions that preceded the witness' departure from the Requested State while the witness is present in the Requesting State and for up to ten days after presence in the Requesting State is no longer required.

Article 13 provides that the Requested State shall provide copies of its publicly available government records if such records are requested under the Treaty. In addition, the Requested State may, in its discretion, provide any record or information not publicly available to the same extent that such records or information would be made available to its own law enforcement and judicial authorities.

Article 14 stipulates that a Party may notify the other of fruits or instrumentalities of a criminal offense believed to be in the territory of the other Party, in order that the Parties shall, to the extent permitted by their law, assist each other in proceedings regarding forfeiture, restitution, or the collection of fines. "Fruits and intrumentalities" include money, vessels and other property used in perpetrating the crime or acquired as a result of the crime.

The provision for assistance in forfeiture proceedings, expressly authorizes assistance in the execution of their penal laws, an area in which countries do not necessarily otherwise assist each other. It is also consistent with a recently enacted U.S. statute that permits equitable sharing of forfeited property with a foreign government in order to reflect that government's contribution in narcotics investigations leading to seizure or forfeiture.

Article 15 provides that a request involving the search, seizure and delivery of an article shall be carried out if the Requesting State provides sufficient evidence for such action under the laws of the Requested State. In the United States, a Bahamian request would have to be supported by showing that probable cause for the search exists, and in The Bahamas a request by the United States

would have to demonstrate compliance with the corresponding Bahamian evidentiary standard. This article also establishes procedures for certification of the chain of custody and condition of a seized article, and it enables the Requested State to stipulate terms and conditions for the transfer of the item in order to protect third party interests.

Article 16 requires the Requested State to make its "best efforts" to locate or identify witnesses, potential defendants, experts, and other persons who are believed to be in its territory and are needed in connection with the investigation, prosecution or suppression of an offense in the Requesting State.

Article 17 obligates the Requested State to arrange for the service of a summons, complaint or other legal document relating to a request for assistance, but leaves it to that State's discretion to serve a subpoena or other process requiring the attendance of a person before any authority or tribunal in the Requesting State. The Requesting State must transmit a document inviting the person to appear in the Requesting State at least thirty days in advance.

Article 18 provides that the Treaty does not preclude either Party from utilizing other international agreements or arrangements, such as Interpol, that may offer means of securing assistance or cooperation.

Article 19 provides that the Parties will consult as appropriate to develop other arrangements on mutual assistance.

Article 20 sets forth standard procedures for ratification and entry into force of the Treaty.

Article 21 provides that either Party may terminate the Treaty by written notice. Termination takes effect six months after such notification.

The exchange of diplomatic notes accompanying the Treaty appends the three legal forms mentioned in Article 9(5), Article 13(3) and Article 15(2) of the Treaty.

The United States Delegation, consisting of representatives of the Departments of Justice and State, has also prepared a Technical Section-by-Section Analysis of the Treaty. That Analysis will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of Justice joins the Department of State in favoring approval of this Treaty by the Senate at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty Between the United States of America and the Commonwealth of the Bahamas on Mutual Assistance in Criminal Matters

The Government of the United States of America and The Government of the Commonwealth of the Bahamas,

Desiring to provide more effective co-operation between the two States in the investigation, prosecution, and suppression of serious crimes, such as narcotics trafficking; and desiring to improve co-ordination and mutual assistance in law enforcement matters in general;

Have agreed as follows:

Article 1

OBLIGATION TO ASSIST

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide mutual assistance in the investigation, prosecution and suppression of offences and in proceedings connected therewith, as defined in Article 2.

2. Assistance shall include:

(a) taking the testimony or statements of persons;

(b) providing documents, records, and articles of evidence;

(c) executing requests for searches and seizures;

(d) transferring persons in custody for testimonial purposes;

(e) serving documents;

(f) locating persons;

(g) exchanging information in relation to the investigation, prosecution and suppression of offences;

(h) immobilizing forfeitable assets; and

(i) any other matter mutually agreed upon.

3. This Treaty is intended solely for mutual Legal Assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

4. All requests under this Treaty shall be executed in accordance with and subject to the limitations imposed by the laws of the Requested State. The method of execution specified in the request shall be followed except to the extent prohibited by the laws of the Requested State.

Article 2

DEFINITIONS

1. For the purposes of this Treaty, the term "offence" means:

(a) any conduct punishable as a crime under the laws of both the Requesting and Requested States; or

(b) any conduct punishable as a crime under the laws of the Requesting State by one year's imprisonment or more, and which arises from, relates to, results from, or otherwise involves:

(i) illegal narcotics or drug activity as referred to in Article 36 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Amending Protocol to the Single Convention on Narcotic Drugs, 1961;

(ii) theft, including the obtaining of money or property by false pretences, representations, or promises and including the commission of embezzlement;

(iii) a crime of violence;

(iv) fraud or the use of fraud, including conduct which has the effect of defrauding the government, its agencies, or its citizens of the ability to conduct their affairs free from fraud, false statements and deceit;

(v) a violation of a law relating to currency or other financial transactions as an integral element contributing to the commission of any offence within the meaning of the foregoing provisions of this paragraph.

2. Offence for the purposes of this Treaty does not extend to any matter which relates directly or indirectly to the regulation, including the imposition, calculation and collection of taxes except any matter pertaining to monies shown to be derived from any activity within the provisions of paragraph 1 of the foregoing definition.

3. For the purposes of this Treaty, the term "proceeding" means the presentation of evidence to:

(a) any court in a criminal trial in the Requesting State (including pre-trial motions);

(b) any grand jury in the United States or any preliminary or commission of inquiry in the Bahamas;

(c) any court or administrative agency in a hearing which could result in an order imposing forfeiture of fruits or instrumentalities of narcotics trafficking;

(d) in the discretion of the Central Authority of the Requested State any court in a criminal or civil hearing which could result in an order imposing civil or criminal punishment, restitution to any victims of an offence, or the collection of fines imposed as a sentence in a criminal prosecution;

(e) in the discretion of the Central Authority of the Requested State any administrative agency performing an adjudicatory function in the Requesting State in respect of the imposition of civil or administrative sanctions upon the offender ancillary to proceedings taken under (a), (b) or (d).

ARTICLE 3

LIMITATIONS ON COMPLIANCE

1. The Central Authority of the Requested State may deny a request to the extent that:

(a) execution of the request would prejudice the security or essential public interests of the Requested State;

(b) the request relates to a political offence or to an offence under military law which would not be an offence under ordinary criminal law;

(c) the evidence requested is to be used for the purpose of a trial of a person on a charge for which that person has been previously convicted or acquitted at a trial in the Requesting State, or was in jeopardy, under the laws of the Requesting State, of being convicted at that trial;

(d) there are substantial grounds leading the Central Authority of the Requested State to believe that compliance would facilitate the prosecution or punishment of the person to whom the request refers on account of his race, religion, nationality or political opinions;

(e) the request does not establish that there are reasonable grounds for believing:

(i) that the criminal offence specified in the request has been committed; and

(ii) that the information sought relates to the offence and is located in the territory of the Requested State;

(f) the request is not in conformity with the provisions of this Treaty.

2. Before denying any request pursuant to this Article, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

3. If execution of a request would interfere with ongoing proceedings in the Requested State, execution may be postponed by that State, or made subject to conditions determined necessary by that State after consultation with the Requesting State.

4. The Requested State shall promptly inform the Requesting State of the reason for denying or postponing the execution of a request.

ARTICLE 4

CENTRAL AUTHORITIES

1. A Central Authority shall be established by each Contracting State.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him.

3. For The Bahamas, the Central Authority shall be the Attorney General or person designated by him.

4. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

ARTICLE 5

CONTENTS OF REQUESTS FOR MUTUAL ASSISTANCE

1. Requests shall be submitted in writing where compulsory process is required in the Requested State or where otherwise required by the Requested State. In urgent circumstances, such requests may be made orally, but shall be confirmed in writing forthwith.

2. The request shall include the following:

(a) the name of the agency or law enforcement authority conducting the proceeding to which the request relates;

(b) the subject matter and nature of the proceeding for the purposes of which the request is made and in particular the criminal offences for the investigation, procecution or suppression of which the assistance is requested and a summary of the facts which form the basis thereof;

(c) a description of the evidence or information sought or the acts of assistance to be performed; such description shall specify where possible the time period to which any such evidence or information relates;

(d) the purpose of which the evidence, information, or other assistance is sought; and

(e) an indication of any time limit within which compliance with the request is desired, stating reasons.

3. To the extent necessary and possible, a request shall also include:

(a) available information on the identity and whereabouts of a person to be located;

(b) the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

(c) the identity and location of persons from whom evidence is sought;

(d) a precise description of the place or person to be searched and of the objects to be seized;

(e) a description of the type and amount of expenses which the Requesting State is willing to assume in the execution of the request; and

(f) any other information which may be brought to the attention of the Requested State to allow it to execute the requests.

ARTICLE 6

EXECUTION OF THE REQUEST

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. That authority shall use all legal means within its power to execute the request. The courts of the Requested State shall have jurisdiction in accordance with its laws to issue subpoenas, search warrants, or other process necessary in the execution of the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons designated by the Central Authority of the Requested State.

ARTICLE 7

COSTS

1. The Requesting State shall assume all ordinary expenses required to present evidence from the Requested State in the Requesting State, including:

(a) travel and incidental expenses of witnesses travelling to the Requesting State, including those of accompanying officials;

(b) fees of experts; and

(c) fees of counsel appointed with the approval of the Requesting State for a person giving testimony or for a defendant.

2. The Requested State shall assume all ordinary expenses of executing a request within its boundaries, except the following costs which shall be borne by the Requesting State:

(a) fees of experts;

(b) expenses of translation and transcription;

(c) travel and incidental expenses of persons travelling to the Requested State to attend the execution of a request;

(d) reasonable costs of locating, reproducing, and transporting to the Central Authority of the Requesting State documents or records specified in a request; and

(e) costs of stenographic reports requested by the Central Authority of the Requesting State, other than reports prepared by a salaried government employee.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

4. The Parties shall agree, pursuant to Article 19, on practical measures as appropriate for the reporting and payment of costs in conformity with this Article.

5. A witness who appears in the territory of the Requesting State pursuant to Article 11 shall be entitled to the same fees and allowances ordinarily accorded to a witness in the territory of the Requesting State.

6. A witness who appears in the territory of the Requested State pursuant to Article 9 shall be entitled to such fees and allowances as shall be agreed between the Central Authorities.

ARTICLE 8

LIMITATIONS ON USE

1. The Requesting State shall not use any information or evidence obtained under this Treaty, nor any information derived therefrom, for purposes other than those stated in the request without the prior consent of the Requested State.

2. Unless otherwise agreed by both Central Authorities, information or evidence furnished under this Treaty shall be kept confidential, except to the extent that the information or evidence is needed for investigations or proceedings forming part of the prosecution of a criminal offence described in the request.

3. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

4. Information or evidence made public in the Requesting State in a trial resulting from the proceedings described in the request may be used only for the following additional purposes:

(a) where a trial results in conviction for any criminal offence within the scope of this Treaty, for any purpose against the person(s) convicted;

(b) whether or not a trial results in the conviction of any person, in the prosecution of any person for any criminal offence within the scope of this Treaty; and

(c) in civil or administrative proceedings, only if and to the extent that such proceedings relate to:

(i) the recovery of the unlawful proceeds of a criminal offence within the scope of this Treaty from a person who has knowingly received them;

(ii) the collection of tax or enforcement of tax penalties resulting from the knowing receipt of the unlawful proceeds of an offence within the meaning of paragraph 1 of Article 2 of this Treaty; or

(iii) the recovery in rem of the unlawful proceeds or instrumentalities of an offence referred to in the preceding subparagraph (ii).

ARTICLE 9

TESTIMONY IN THE REQUESTED STATE

1. A person requested to testify or to produce documentary information or articles in the territory of the Requested State may be compelled to do so in accordance with the requirements of the law of the Requested State.

2. If the person testifying or required to produce documents in the Requested State asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, his testimony or the production of documents shall nonetheless be taken or made, as the case may be, and the claim made known to the Requesting State for resolution by the authorities of the Requesting State.

3. The Requested State shall furnish information in advance about the date and place of the taking of testimony of the witness.

4. The Requested State shall authorise the presence of such persons as specified in the request during the execution of the request and, subject to the laws of the Requested State, allow such to question the person whose testimony is sought.

5. Business records produced under this Article shall be authenticated by the person in charge of maintaining them through the use of a Form A appended to this Treaty, which shall be executed under oath. No further certification shall be required. Documents authenticated under this paragraph shall be admissible in evidence in proof of the truth of the matter set forth therein.

ARTICLE 10

TRANSFERRING PERSONS IN CUSTODY FOR TESTIMONIAL PURPOSES

1. A person in custody in the Requested State who is needed as a witness in connection with the execution of a request in the Requesting State shall be transported to that State if the person consents and if the Requested State has no reasonable basis to deny the request.

2. A person in the custody of the Requesting State whose presence in the territory of the Requested State is needed in connection with the execution of a request under this Treaty may be transported to the territory of the Requested State if the person and both States consent.

3. For the purpose of this Article:

(a) the receiving State shall be responsible for the safety and health of the person transferred and have the authority and obligation to keep the person transferred in custody unless otherwise authorised by the sending State;

(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or otherwise agreed and in any event no later than the date upon which he would have been released from custody in the territory of the sending State;

(c) the receiving State shall not require the sending State to initiate extradition proceedings; and

(d) the person transferred shall receive credit for the service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 11

TESTIMONY IN THE REQUESTING STATE

When the appearance of a person who is in the territory of the Requested State is needed in the territory of the Requesting State for the purpose of execution of a request under this Treaty, the Central Authority of the Requesting State may request that the Central Authority of the other State invite the person to appear before the appropriate authority in the territory of the Requesting State. The person required shall be told the kind and amount of expenses which the Requesting State has indicated will be paid to him. The response of the person shall be communicated promptly to the Central Authority of the Requesting State. Such a person shall be under no compulsion to accept such an invitation.

ARTICLE 12

SAFE CONDUCT

1. No person in the territory of the Requesting State to testify in pursuance of the execution of a request shall be subject to service of process or prosecution or suit or be detained or subjected to any restriction of personal liberty by reason of any acts which preceded his departure from the Requested State.

2. The safe conduct provided for in this Article shall cease if, ten days after the person appearing has been notified that his presence is no longer required, that person being free to leave, has not left the Requesting State; or, having left the Requesting State, has returned.

ARTICLE 13

PROVIDING RECORDS OF GOVERNMENT AGENCIES

1. The Requested State shall provide copies of publicly available records of a government agency or of its judicial department.

2. The Requested State may provide copies of records or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would to its own law enforcement or judicial authorities. The Requested State may in its discretion deny the request entirely or in part.

3. Documents provided under this Article shall be attested by the official in charge of maintaining them through the use of Form B, appended to this Treaty. No further certification shall be required. Documents attested under this paragraph shall be admissible evidence in proof of the truth of the matters set forth therein.

ARTICLE 14

ASSISTING IN FORFEITURE PROCEEDINGS

1. If the Central Authority of one State becomes aware of fruits or instrumentalities of offences located in the other State which may be forfeitable or otherwise subject to seizure under the laws of that State related to serious offences such as narcotics trafficking, it may so inform the Central Authority of the other State. If that other State has jurisdiction in this regard, it shall present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States shall assist each other to the extent permitted by their respective laws and this Treaty in proceedings relating to the forfeiture of the fruits or instrumentalities of offences, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions.

ARTICLE 15

SEARCH AND SEIZURE

1. A request for the search, seizure and delivery of any article to the Requesting State shall be executed if it includes the information justifying such action under the laws of the Requested State.

2. Every official of the Requested State who has custody of seized articles shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. The certificates shall be admissible in evidence in the Requesting State as proof of the truth of the matters set forth therein.

3. The Requested State shall not be obliged to provide any item seized to the Requesting State unless that State has agreed to such terms and conditions as may be required by the Requested State to protect third party interests in the item to be transferred.

ARTICLE 16

LOCATION AND IDENTITY OF PERSONS

1. The Requested State shall make best efforts to ascertain the location and identity of persons specified in a request and who are needed in connection with the investigation, prosecution or suppression of an offence in the Requesting State.

2. The Requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 17

SERVING DOCUMENTS

1. The Requested State shall effect service of any document relating to or forming part of any request for assistance properly made under the provisions of this Treaty transmitted to it for this purpose by the Requesting State; provided that the Requested State shall not be obliged to serve any subpoena or other process requiring the attendance of any person before any authority or tribunal in the Requesting State.

2. Unless otherwise agreed, any request for the service of a document inviting the appearance of a person before an authority in the Requesting State shall be transmitted at least thirty days prior to the date of the scheduled appearance.

3. The Requested State shall return as proof of service a receipt signed by the person served or a declaration signed by the officer making service, specifying the form and date of service.

ARTICLE 18

COMPATIBILITY WITH OTHER TREATIES AND INTERNAL LAWS

1. Assistance and procedures provided by this Treaty shall not prevent either of the Contracting States from granting assistance to the other Party in accordance with the provisions of other international agreements to which it may be a party or in accordance with the provisions of its internal laws.

2. Subject to the terms of paragraph 1, a Party needing assistance as provided in Article 1 in the investigation, prosecution or suppression of an offence as defined in Article 2 shall request assistance pursuant to this Treaty.

3. No private party may invoke the provisions of this Treaty to exclude any evidence hereunder or to impede the execution of a request.

ARTICLE 19

IMPROVEMENT OF ASSISTANCEE

1. The Parties agree to consult as appropriate to develop other specific agreements or arrangements, formal or informal, on mutual legal assistance.

2. The Parties may agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 20

RATIFICATION AND ENTRY INTO FORCE

1. This Treaty shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE 21

DENUNCIATION

Either Party may terminate this Treaty by means of written notice to the other State. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

Done in duplicate at Nassau the 12th day of June 1987 and the 18th day of August 1987.

For the Government of the United States of America

For the Government of The Commonwealth of The Bahamas

No. 053

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Commonwealth of The Bahamas and has the honor to refer to the Treaty between the United States of America and the Commonwealth of The Bahamas on mutual legal assistance in criminal matters signed at Nassau on the 12th day of June 1987 and the 18th day of August 1987 and to subsequent discussions between representatives of our two governments concerning the said Treaty. The Government of the United States proposes that the three legal forms described in the Mutual Legal Assistance Treaty be appended to the Treaty as exhibits thereto. The first legal form, Form A, is referenced in Article 9(5) of the Treaty; the second, Form B, is referenced in Article 13(3) of the Treaty; and the third, Form C, is referenced in Article 15(2). The texts of the forms are attached.

If these proposals conform to the understanding of the Government of the Commonwealth of The Bahamas, the Government of the United States proposes that this note, and the Ministry's note in reply confirming the corrections, shall constitute a correction of the text of the Treaty.

The Embassy of the United States of America wishes to take this opportunity to extend to the Ministry of Foreign Affairs of the Commonwealth of The Bahamas the renewed assurances of its highest consideration.

Embassy of the United States of America,
Nassau, January 27, 1988.

COMMONWEALTH OF THE BAHAMAS)
ISLAND OF NEW PROVIDENCE)
CITY OF NASSAU)
EMBASSY OF THE UNITED STATES)
OF AMERICA)

I, Joseph E. Howard, Vice Consul

of the United States of America at Nassau, N.P., Bahamas

duly commissioned and qualified, do hereby certify that

the foregoing copy is a true and faithful copy of the

original document, the same having been carefully

examined by me and compared with the said original

and found to agree therewith word for word and figure for

figure.

IN WITNESS WHEREOF I have hereunto set my hand and affixed

the seal of the American Embassy at Nassau, Bahamas, this

27th day of January, 19 88.

Joseph E. Howard
Vice Consul

Ministry of Foreign Affairs
P.O. Box N-3746
NASSAU, Bahamas

4 February, 1988

No. 65

The Ministry of Foreign Affairs of the Commonwealth of The Bahamas presents its compliments to the Embassy of the United States of America and has the honour to refer to the Embassy's Note No. 053 dated January 27, 1988 in regards to the Mutual Legal Assistance Treaty in Criminal matters between the Government of the Commonwealth of The Bahamas and the Government of the United States of America.

The Ministry has the honour to inform the Embassy that the three forms proposed for the appendage to the Treaty are acceptable as they are in keeping with the substantive text of the Agreement.

The Ministry of Foreign Affairs of the Commonwealth of The Bahamas avails itself of this opportunity to renew to the Embassy of the United States of America, the assurances of its highest consideration.

Embassy of the United States
of America
Mosmar Building
Queen Street
NASSAU, Bahamas

A true copy of the signed original
Robin du Frank

Proposed Form A

CERTIFICATE OF AUTHENTICITY
OF
BUSINESS RECORDS

I, _____, attest on penalty of criminal
(Name)
punishment for false statement of false attestation that I am employed by _____ and
(Name of Business from which documents are sought)
that my official title is _____. I
(Official Title)
further state that each of the records attached hereto is the original or a duplicate of the original records in the custody of _____. I
(Name of Business from which documents are sought)
further state that:

A) such records were made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly conducted business activity;

C) the business activity made such records as a regular practice; and

D) if such record is not the original, such record is a duplicate of the original.

_____
(Signature)

_____
(Date)

PROPOSED FORM B

ATTESTATION OF AUTHENTICITY OF DOCUMENTS

I, _____ (Name), attest on penalty of criminal punishment for false statement or false attestation that my position with the Government of _____ (Name of Country) is _____ (Official Title) and that in that position I am authorized by the law of _____ (Name of Country) to attest that the documents attached hereto and described below are true copies of the original official records which are recorded and filed in _____ (Name of Government Office or Agency) which is an office or agency of the Government of _____ (Name of Country).

Description of Documents:

_____
(Signature)

_____
(Title)

_____
(Date)

PROPOSED FORM C

ATTESTATION OF SEIZED ARTICLES

I, _____ (Name), certify that I am _____ (Official Title), employed in _____ (Name of Government Office or Agency). I received custody of the article(s) listed below from _____ (Name of Person) on _____ (Date) at _____ (Place). I relinquished custody of the article(s) to _____ (Name of Person) on _____ (Date) at _____ (Place), at which time the articles were in the same condition as when I received them (or, if different, as noted below).

Description of Articles:

Chances in Condition While in my Custody:

_____
(Signature)

_____
(Title)

_____
(Date)